IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1248 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAMPAL BHARAI KORI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1248 of 1999

THROUGH JAIL for Petitioner No. 1

MRS SHILPA J UNWALLA for Petitioner No. 1

MR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/08/2002

ORAL JUDGEMENT

This appeal is preferred by the appellant against judgement and order rendered in Sessions Case No. 287/98

by Additional City Sessions Judge (Court No. 13), Ahmedabad, on August 9, 1999, convicting him for an offence punishable under Section 20(b)(i) of the NDPS Act and sentencing him for RI for 4 years and to pay fine of Rs. 50,000, in default to underto further imprisonment for a period of six months.

2. The facts leading to the present incident can be stated thus:

2.1 Police Inspector, Navrangpura Police Station of Ahmedabad received a secrete information on 23.8.1998 that a person named Rampal Bharai Kori, resident of Gopalnagar, Memnagar Chhapra is likely to pass through Memnagar Naka, Loyalla Hall, Saurabh Society and is to go towards Gujarat University area, keeping with him quantity of Ganja without any pass or permit. The Police Inspector therefore reduced the information in writing, informed his superiors and after drawing a panchnama, arranged for a watch. When they found the person coming, they intercepted him and after following the procedure as required under the NDPS Act, took his search. The contraband was found from his possession that was got primarily inspected by an Officer of FSL, who also opined that it is contraband Ganja. After drawing a panchnama, the contraband was seized and the appellant was arrested.

2.2 At the trial, the appellant pleaded not guilty to the charge and faced the trial. Learned Additional Sessions Judge, after appreciating the evidence, came to the conclusion that the prosecution could successfully establish the charge against the accused appellant and therefore, recorded conviction and sentenced the appellant as stated above by the impugned judgement and order.

3. The convict - appellant has preferred this appeal through jail and is represented by Ms. Unwalla. She has not raised any contention to assail the judgement and order on merits, but she mainly places reliance on a judgement rendered by this Court in Criminal Appeal No. 1099/97 (Coram: B..Shethna, J.) dated Aug. 3, 2001, wherein sentence of a similarly situated convict was reduced by the Court while confirming conviction. She submitted that in that case substantive sentence of five years was reduced to the sentence already undergone and fine of Rs. 50,000/- was reduced to Rs. 5,000/- only and in de-fault it was directed that the appellant shall undergo SI for 15 days. She submitted that in that case 2.330 kgs. and 2.380 kgs of Ganja were seized from the appellants. She submitted that case of the appellant

herein is very similarly situated and he was a fruit vendor and he has already undergone the substantive sentence of 4 years and he is not able to pay the fine because of his poor condition and therefore, mercy may be shown on him.

4. Learned APP Mr. Abichandani opposes this appeal vehemently. According to him, in view of the fact that there is no lacuna in the judgement and in view of the fact that the appellant is involved in a crime of a serious nature, this Court may not interfere with the quantum of sentence.

5. Having regard to rival side contentions, what transpires is that the appellant came to be arrested on 23rd August, 1998 and since then he is in jail. The conviction was recorded on 9.8.1999 and he is sentenced to undergo RI for 4 years. The petitioner has thus almost undergone the substantive sentence of 4 years if date of arrest is considered. There is no dispute about the fact tht he was a fruit vendor. His economic condition is reflected by the fact that he has not been able to engage an Advocate and prefer an appeal privately. He has sent this appeal through jail authorities unassisted by legal expert. He is represented by an appointed advocate.

6. It is true that the conviction is under NDPS Act and the appellant is found to be in possession of substantial quantity of Ganja. For that he has been convicted and has undergone substantive sentence. Even this Court is not inclined to interfere with the substantive sentence. So far as the fine is concerned, maximum permissible under law has been imposed by the trial Court i.e. Rs. 50,000/-. In peculiar facts and circumstances of the case, in the opinion of this Court, while confirming the conviction and substantive sentence, the fine imposed needs to be reduced to Rs. 10,000/- to serve the ends of justice.

7. In view of the fact that conviction is not challenged and it is only the quantum part of the order is assailed, the judgement and order regarding conviction is hereby confirmed. The substantive sentence of 4 years RI imposed on the appellant is also confirmed. Fine of Rs. 50,000/- imposed on the appellant is reduced to Fine of Rs. 10,000/- . In event of default in payment of fine of Rs. 10,000/- the appellant shall undergo further imprisonment for a period of one month. Appeal is therefore allowed to that extent.

(A.L.Dave, J.)

*/Mohandas